S.B.CIVIL WRIT PETITION NO.3662/2007

Pema Ram
v.
State of Rajasthan & Ors.

Date of Order :: 6th September, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. D.S.Rajvi, for the petitioner.
Mr. S.N.Tiwari, Dy.Govt.Advocate.

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The petitioner, an elected Sarpanch of the Gram Panchayat Likhmadesar, Panchayat Samiti Dungargarh, by this petition for writ is assailing validity, propriety and correctness of the order dated 7.6.2007 passed by the Divisional Commissioner, Bikaner declaring him ineligible to hold office of Sarpanch.

The contention of counsel for the petitioner while assailing validity of the order aforesaid beside the others is that before passing the order impugned no notice as required under Rule 22(7) of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as "the Rules of 1996") was given by the Divisional Commissioner.

The allegation of the petitioner in petition for writ reads as follows:-

> "However, no notice under rule 22(2) of the Rules of 1996 or under rule 22(7) was ever

> given to the petitioner therefore there were no proceedings initiated under section 38(1) of the Rajasthan Panchayati Raj Act, 1994."

The allegation aforesaid is also reiterated by the petitioner in sub-para (f) of para 8 of the writ petition in following terms:-

> "That as per rule 22(7) of the Rajasthan Panchayati Raj Rules, 1996, no opportunity of hearing was provided to the petitioner by the State Government or by Divisional Commissioner before removing him."

In reply to the averments aforesaid, the respondents contended as under:-

> "That the averments made in para no.7 of the writ petition are not admitted in the manner they have been stated by the petitioner. In this connection, it is respectfully submitted that before passing the order dt.7-6-2007, due approval was taken by the Divisional Commissioner from the State Government, and mention of this fact has also been made in the order dated 7-6-2007. More so, it is pertinent to point out that a copy of the aforesaid order was handed over to the P.R.O., Bikaner for publication purposes, and not otherwise as stated by the petitioner in this para of the writ petition."

Heard counsel for the parties.

Rule 22 of the Rules of 1996 prescribes procedure for holding an inquiry against an officer of a Panchayat Raj institution. Sub-rule(7) puts an embargo upon the State Government to consider findings of the inquiry officer and to provide an opportunity of hearing to member/officer of the Panchayat Raj Institution against whom inquiry was conducted and then to pass an appropriate order. Sub-rule(7) provides a valuable right to a delinquent member/officer of a Panchayat Raj institution to contest the findings given against him. It also puts an embargo upon the State Government or the authority acting on behalf of the State Government to pass a speaking and reasoned order.

In the instant matter the non-issuance of the notice for hearing as provided under Rule 22(7) of the Rules of 1996 is established, thus, it can be safely said that no opportunity was given to the petitioner to contest the findings given by the inquiry officer and that has caused a prejudice to his right to defend himself. Beside that, I also found that the order passed by the Divisional Commissioner, Bikaner is absolutely a non-speaking and unreasoned order. From reading of the same it does not reveal as to how he considered and accepted the findings given by the inquiry officer. Thus, the same is bad in eye of law.

Accordingly, this petition for writ is allowed. The order dated 7.6.2007 passed by the Divisional Commissioner, Bikaner exercising powers under Section 38(1) of the Act of 1994 is quashed.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.